

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
NATHANIEL ALEX FORTIER, JR. }

For Appellant: Nathaniel Alex Fortier, Jr.,
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Gary M. Jerri
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Nathaniel Alex Fortier, Jr. for refund of personal income tax in the amount of \$50 for the year 1966.

The sole question presented is whether appellant's claim for refund was barred by the statute of limitations.

Appellant filed a timely California personal income tax return for calendar year 1966 and paid a self-assessed tax of \$50. He was drafted into the United

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States Army in October 1967 and served three years, including one year in Viet Nam. He was discharged in October 1970. On July 21, 1971, appellant submitted a claim for refund of the full amount of the income tax he had paid for 1966. Respondent denied the claim and this appeal followed..

Section 19053 of the Revenue and Taxation Code provides that no credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer. Section 18434 of the same code modifies this provision by providing that in the case of an individual who is serving as a member of the armed forces of the United States, beyond the boundaries of the United States, the Franchise Tax Board shall automatically grant an extension of time for filing a refund claim until 180 days after his return to the United States.

The last day prescribed for filing a personal income tax return for calendar year 1966 was Monday, April 17, 1967. Under section 19053 the last day for filing a timely claim for refund of 1966 taxes was therefore April 17, 1971. Even if we assume that appellant returned to the United States on October 30, 1971, and was discharged that same day the extension provided by section 18434 would have expired on April 29, 1971. Consequently appellant's claim, filed on July 21, 1971, was clearly barred by the expiration of the filing period. Although we sympathize with appellant's comment that state taxes were the furthest thing from his mind during the mad shuffle of military life, the plain legislative mandate of the statute must prevail.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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It is hereby ordered that the date "October 30, 1970" be substituted for the date "October 30, 1971" in lines six and seven of the second full paragraph on the second page of ~~the~~ opinion and order issued by this board on July 31, 1973.

William B. Brown, Chairman
 George H. Lee, Member
 John W. Lynch, Member
 Phil H. Lee, Member
 _____, Member

W. W. Dwyer, Secretary

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Nathaniel Alex Fortier, Jr. for refund of personal income tax in the amount of \$50 for the year 1966, be and the same is hereby sustained.

William G. Buck, Chairman
 Frank Decker, Member
 John W. Lynch, Member
 Robert Davis, Member
 _____, Member

W. W. Dunlop, Secretary